

REMARKS

Applicants have amended claims 28, 35, and 53. Applicants note with appreciation the Office's indication that claim 35 would be allowable if written in independent form. In view of the following remarks, Applicants hereby request further examination and reconsideration of the application, and allowance of claims 26-35 and 53-57.

The Office has indicated that item 20 in the PTO-1449 form submitted by Applicants on September 6, 2000 is in error. The Office has correctly regarded the intended document number to be U.S. Patent No. 5,327,331 to Roberts.

Additionally, the Office has indicated that items 31 and 33-50 in that PTO-1449 form have not been reviewed because copies of these references are not available because Serial No. 09/074,455 is currently unavailable. Applicants respectfully request the Office to consider all of the cited references in the PTO-1449 form.

The Office has rejected claims 28-34 and 53-57 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,304,212 to Czeisler et al. ("Czeisler"). With respect to claims 28-34, the Office asserts that discloses: at lines 29-37 of column 1 the elements of the human alertness and performance that can be affected by the circadian cycle; at lines 4-51 the benefits of assisting rotating shift workers as well as permanent shift workers at night. Lines 35-39 of column 28 describe the lighting source as non-solar and within the range of 15 to 150,000 lux; and at lines 9-36 of column 42 describe a duration of light exposure within the range of claim 31. Furthermore, the Office asserts that the light source is described as cabin light within an airplane which the Office asserts would both expose a substantially non-ocular region of the human subject having ample surface vasculature (the face, neck, and hands) and the light has a bandwidth in the visible spectrum. With respect to claims 53-57, the Office asserts that Czeisler et al. discloses a system comprising a temperature measuring system (lines 30-54 of column 13) and non-solar photic stimulation generating system (lines 20-65 of column 62) that activates upon an assessed time to adjust the circadian cycle of a human. Line 59 of column 39 to line 9 of column 40, figure 11, and figure 15b describe various times when light exposure begins.

Czeisler does not anticipate, suggest, or disclose, "exposing a substantially non-ocular region of the human subject, but not a substantially ocular region to a non-solar photic stimulation during one or more circadian cycles" as recited in claim 28 or "a non-solar

photic stimulation generating system positioned to expose a non-ocular region of a human subject, but not a substantially ocular region to a non-solar photic stimulation during one or more circadian cycles to reset the human circadian clock” as recited in claim 53. As the Office has acknowledged, Czeisler discloses exposing both a substantially ocular region and a substantially non-ocular region to light. For example, col. 62, lines 24-38 in Czeisler states that, “In particular, electric lights of either incandescent or fluorescent type can produce light of sufficient intensity when large numbers of them are concentrated on a surface. A wall eight feet high and ten feet wide covered with conventional fluorescent lamps spaced two to three inches apart (3800-5800 watts) will create illumination sufficient to expose a person to 9,500 lux, measures of the pupil of the subject, at a distance of ten feet or so if the person’s gaze is directed at the wall. . . . Thus the light is diffuse enough that a person can stare directly at the glowing lamp from any distance without discomfort.” Accordingly, Czeisler discloses exposing both a substantially ocular region and a non-ocular region to illumination, but does not teach or suggest exposing a substantially non-ocular region, but not a substantially ocular region to non-solar photic stimulation. As discussed on page 4, lines 14-25 of the above-identified patent application, exposing a substantially non-ocular region, but not a substantially ocular region provides a number of advantages, such as reducing eye fatigue and allowing normal routines, such as sleep, to take place without interruption. Accordingly, in view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claims 28 and 53. Since claims 29-35 depend from and contain the limitations of claim 28 and claims 54-57 depend from and contain the limitations of claim 53, they are distinguishable over the cited reference and are patentable in the same manner as claims 28 and 53.

The Office has also objected to claim 34 because of a typographical error with the word, “vaculature” which should be replaced with the word “vasculature”. Accordingly, Applicants have amended claim 34 to correct this minor typographical error in accordance with the Office’s suggestion.

The Office has asserted that claim 35 would be allowed if written in independent format. In view of the foregoing amendments and remarks with respect to claim 28 from which claim 35 depends, no amendment of claim 35 is believed to be necessary and claim 35 is believed to be in condition for allowance.

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested. Pursuant to 37 CFR § 1.121, attached as Appendix A is a Version With Markings to Show Changes Made.

In view of the all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

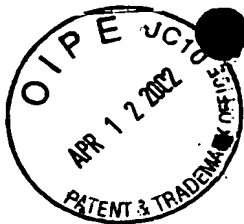
Respectfully submitted,

Date: April 9, 2002

Gunnar G. Leinberg
Gunnar G. Leinberg
Registration No. 35,584

NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603
Telephone: (716) 263-1014
Facsimile: (716) 263-1600
545

Certificate of Mailing - 37 CFR 1.8(a)	
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: <u>US Patent Commissioner for Patents, Washington, D.C. 20231</u>	
on the date below.	
<u>4/9/02</u>	<u>Sheri A. Moscato</u>
Date	Sheri A. Moscato



Appendix A

Version With Markings to Show Changes Made

In reference to the amendments made herein to claims 28, 34, and 53, additions appear as underlined text, while deletions appear as bracketed text, as indicated below:

In The Claims:

Please amend claims 28, 34 and 53 as follows:

28. (Amended) A method of enhancing nighttime alertness and performance in a human subject comprising the step of exposing a substantially non-ocular region of the human subject, but not a substantially ocular region to a non-solar photic stimulation during one or more circadian cycles.

34. (Amended) The method according to Claim 28 wherein the non-ocular region of the human subject has ample surface [vaculature] vasculature.

53. (Amended) A system for resetting a human circadian clock comprising:
a non-solar photic stimulation generating system positioned to expose a non-ocular region of a human subject, but not a substantially ocular region to a non-solar photic stimulation during one or more circadian cycles to reset the human circadian clock;
and

a temperature measuring system which measures body temperature for the human subject during at least a portion of a circadian cycle, wherein the non-solar photic stimulation generating system generates non-solar photic stimulation during one or more circadian cycles at an exposure time dependent upon an assessed time when the body temperature for the human subject is at a minimum.

RECEIVED
APR 17 2002
TC 3700 MAIL ROOM